

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1653

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-7-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 8. Rental Agreements; Rights of Access to a Dwelling Unit and Tenant's Property

Sec. 1. (a) This chapter applies only to a rental agreement entered into or renewed after June 30, 1999.

(b) This chapter applies to a landlord or tenant only if the rental agreement was entered into or renewed after June 30, 1999.

Sec. 2. (a) For purposes of this section, "tenant" includes a former tenant.

(b) A waiver of this chapter by a landlord or tenant, by contract or otherwise, is void.

Sec. 3. The definitions in IC 32-7-5 apply throughout this chapter.

Sec. 4. (a) As used in this chapter, "dwelling unit" means a structure or part of a structure that is used as a home, residence, or sleeping unit.

(b) The term includes an apartment unit, a boarding house unit, a rooming house unit, a manufactured home (as defined in IC 22-12-1-16) or mobile structure (as defined in IC 22-12-1-17)

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used as a dwelling unit and the manufactured home's or mobile structure's space, and a single or two (2) family dwelling.

Sec. 5. Unless otherwise provided by a written rental agreement between a landlord and tenant, a landlord shall give the tenant at least thirty (30) days written notice before modifying the rental agreement.

Sec. 6. Except as provided in IC 16-41-27-29, IC 32-7-5, or IC 32-7-6, a landlord may not:

- (1) take possession of;
- (2) remove from a tenant's dwelling unit;
- (3) deny a tenant access to; or
- (4) dispose of;

a tenant's personal property in order to enforce an obligation of the tenant to the landlord under a rental agreement. The landlord and tenant may agree in a writing separate from the rental agreement that the landlord may hold property voluntarily tendered by the tenant as security in exchange for forbearance from an action to evict.

Sec. 7. (a) This section does not apply if the dwelling unit has been abandoned.

(b) For purposes of this section, a dwelling unit is considered abandoned if:

- (1) the tenants have failed to pay, or have failed to offer to pay, rent due under the rental agreement; and
- (2) the circumstances are such that a reasonable person would conclude that the tenants have surrendered possession of the dwelling unit.

An oral or written rental agreement may not define abandonment differently than is provided by this subsection.

(c) Except as authorized by judicial order, a landlord may not deny or interfere with a tenant's access to or possession of the tenant's dwelling unit by commission of any act, including any of the following:

- (1) Changing the locks or adding a device to exclude the tenant from the dwelling unit.
- (2) Removing the doors, windows, fixtures, or appliances from the dwelling unit.
- (3) Interrupting, reducing, shutting off, or causing termination of electricity, gas, water, or other essential services to the tenant unless the interruption, shutting off, or termination results from an emergency, good faith repairs, or necessary construction. This subdivision does not require a

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landlord to pay for services described in this subdivision if the landlord has not agreed, by an oral or written rental agreement, to do so.

(d) A tenant may not interrupt, reduce, shut off, or cause termination of electricity, gas, water, or other essential services to the dwelling unit if the interruption, reduction, shutting off, or termination of the service will result in serious damage to the rental unit.

SECTION 2. IC 32-7-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 9. Emergency Possessory Orders

Sec. 1. The definitions in IC 32-7-5 and IC 32-7-8 apply throughout this chapter.

Sec. 2. The small claims docket of a court has jurisdiction to grant an emergency possessory order under this chapter.

Sec. 3. The following may file a petition for an emergency possessory order under this chapter:

- (1) A tenant, if the landlord has violated IC 32-7-8-7.
- (2) A landlord, if the tenant has committed, or threatens to commit, waste to the rental unit.

Sec. 4. A petition for an order under this chapter must satisfy the following:

- (1) Include an allegation specifying both of the following:
 - (A) The violation, act, or omission caused or threatened by a landlord or tenant.
 - (B) The nature of the specific immediate and serious injury, loss, or damage that the landlord or tenant has suffered or will suffer if the violation, act, or omission is not enjoined.
- (2) Be sworn to by the petitioner.

Sec. 5. If a tenant or a landlord petitions the court to issue an order under this chapter, the court shall immediately do the following:

- (1) Review the petition.
- (2) Schedule an emergency hearing for not later than three (3) business days after the petition is filed.

Sec. 6. (a) At the emergency hearing, if the court finds:

- (1) probable cause to believe that the landlord has violated or threatened to violate IC 32-7-8-7; and
- (2) that the tenant will suffer immediate and serious injury, loss, or damage;



the court shall issue an emergency order under subsection (b).

(b) If the court makes a finding under subsection (a), the court shall order the landlord to do either or both of the following:

- (1) Return possession of the dwelling unit to the tenant if the tenant has been deprived of possession of the dwelling unit.
- (2) Refrain from violating IC 32-7-8-7.

(c) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

Sec. 7. (a) For purposes of this section, "waste" does not include failure to pay rent.

(b) At the emergency hearing, if the court finds:

- (1) probable cause to believe that the tenant has committed, or threatens to commit, waste to the rental unit; and
- (2) that the landlord has suffered or will suffer immediate and serious injury, loss, or damage;

the court shall issue an order under subsection (c).

(c) If the court makes a finding under subsection (a), the court shall order the tenant to do either or both of the following:

- (1) Return possession of the dwelling unit to the landlord.
- (2) Refrain from committing waste to the dwelling unit.

(d) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

Sec. 8. (a) When a petition is filed under this chapter, the clerk shall issue to the respondent a summons to appear at a hearing that:

- (1) gives notice of the date, time, and place of the hearing; and
- (2) informs the respondent that the respondent must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with the summons to appear in accordance with Rule 4.1 of the Rules of Trial Procedure.

(c) The court shall not grant a continuance of the emergency hearing except upon clear and convincing evidence that manifest injustice would result if a continuance were not granted.

Sec. 9. If the court sets a subsequent hearing under section 6(c) or 7(c) of this chapter, the court may do the following at the subsequent hearing:

- (1) Determine damages.



(2) Order return of a tenant's withheld property.

(3) Make other orders the court considers just under the circumstances.

Sec. 10. The adjudication of an emergency possessory claim under section 6(b) or 7(b) of this chapter does not bar a subsequent claim a party may have against the other party arising out of the landlord and tenant relationship unless that claim has been adjudicated under section 9 of this chapter.

SECTION 3. IC 33-4-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. The small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than three thousand dollars (\$3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars (\$3,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-7-9.

SECTION 4. IC 33-5-2-4, AS AMENDED BY HEA 1440-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Except as provided in subsection (b), the small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than three thousand dollars (\$3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars (\$3,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-7-9.

(b) This subsection applies to a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000). The small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the

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property sought to be recovered is not more than six thousand dollars (\$6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars (\$6,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-7-9.

SECTION 5. IC 33-5-19.3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) The court has a standard small claims and misdemeanor division.

(b) Notwithstanding IC 33-5-2-4, the small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars (\$6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars (\$6,000) in order to bring the claim within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-7-9.

SECTION 6. IC 33-10.5-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Each judge of the county court shall maintain the following dockets:

(1) An offenses and violations docket.

(2) A small claims docket for **the following:**

(A) All cases where the amount sought or value of the property sought to be recovered is three thousand dollars (\$3,000) or less; the plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of his claim over three thousand dollars (\$3,000) to bring it within the jurisdiction of the small claims docket. ~~and~~

(B) All possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000).

(C) Emergency possessory actions between a landlord and tenant under IC 32-7-9.



(3) A plenary docket for all other civil cases.

SECTION 7. IC 33-11.6-4-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.5. The court has original and concurrent jurisdiction with the circuit and superior court in emergency possessory actions between a landlord and tenant under IC 32-7-9.**

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